

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4447 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AGRICULTURAL PRODUCE MARKET COMMITTEE

Versus

LUNAVADA NAGAR PANCHAYAT & ANR.

Appearance:

MR GR UDHWANI for Petitioner
MR BC DAVE for Respondent No. 1
MR HL JANI for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 06/12/96

ORAL JUDGEMENT

1. The petitioner is a market committee constituted under the provisions of Gujarat Agricultural Produce Markets Act, 1963 (hereinafter referred to as the Act, 1963).
2. Section 10 of the Act, 1963 makes the Market committee a corporate sole as well as it is also a local

authority. At the place where the market committee is situated there is another local authority namely Nagar Panchayat, Lonavada, the respondent no.1, herein. The respondent no.1 has levied the property tax i.e. house tax and conservancy tax in its area. The State Government on the other hand, levied the education cess under the Gujarat Education Cess Act and respondent no.1 is an agency for the purpose of collecting the aforesaid tax. The petitioner received a letter dated 13th June, 1984 from the Recovery Officer of the respondent no.1 under which it was called upon to pay house tax, education cess and conservancy tax. Enclosed to that letter, the bills for the aforesaid demand as required under sec. 192 of the Gujarat Panchayat Act have also been received. The petitioner is challenging the aforesaid demand notice by this Special Civil Application.

3. The respondent no.1 has filed the reply to this Special Civil Application, but the respondent no.2 has not chosen to file reply to the same.

4. Heard learned counsel for the parties. The counsel for the petitioner contended that the petitioner being a local authority is exempted from the payment of education cess, and as such, the demand of education cess from the petitioner by the respondent no.1 as an agent of respondent no.2 is wholly without any authority of law. In support of his contention, the learned counsel for the petitioner placed reliance on the decision of this court in the case of Agricultural Produce Market Committee, Gondal vs. Gondal Municipality & Anr. reported in 1995(2) GLR 542. Challenging the validity of the demand of house tax and conservancy tax, the counsel for the petitioner contended that the petitioner being a local authority is exempted from the payment of property tax as well as conservancy tax also. The petitioner has made reference in this respect to the provisions of sec.178 of the Gujarat Panchayat Act, 1961 and Rule 7 of Gujarat Gram and Nagar Panchayat Taxes and Fees Rules, 1965.

5. Learned counsel for the respondent no.2 Shri H.L. Jani very fairly conceded that the demand of education cess from the petitioner does not stand to any competence and authority in view of the decision of this court in the case of Agricultural Produce Market Committee, Gondal vs. Gondal Municipality & Anr. (supra). The learned counsel for the respondent no.1 justified the demand of house tax and the conservancy tax from the petitioner and in support of his contention he placed reliance on the decision of this court in the case of Vyara Agricultural

Produce Market Committee vs. Vyara Nagar Panchayat & Anr. reported in 1985(1) GLR 355.

6. I have given my thoughtful consideration to the submissions made by learned counsel for the parties. So far as the levy, demand and collection of the education cess from the petitioner by the respondent no.1 is concerned, it is suffice to say that in view of the concession made by the counsel for the respondent no.2 and the decision of this court in the case of Vyara Agricultural Produce Market Committee vs. Vyara Nagar Panchayat & Anr. (supra) it cannot be allowed to stand. This Special Civil Application succeed to the aforesaid extent and the demand of education cess under Annexure-AA (Collectively) is quashed and set aside.

7. So far as the demand of house tax and conservancy tax by the respondent no.1 from the petitioner is concerned, it is suffice to say that as per the petitioner's own case, it is regularly making the payment thereof though may be under protest. From the averments made by the petitioner in para no.6 of this Special Civil Application, it is an admitted case of the petitioner that these two taxes were paid by the petitioner even earlier to year 1981. The petitioner at no point of time, earlier to the demand of these taxes under Annexure 'A' felt aggrieved of demand of those taxes, but abruptly in the year 1984, it has approached to this court.

8. It is a dispute regarding the levy, demand and collection of the two taxes, house tax and conservancy tax from the petitioner by the respondent no.1. The petitioner as well as the respondent no.1 are two bodies which have been constituted under statutes and as such, it is not advisable for them to litigate themselves by filing this Special Civil Application before this court. Earlier in many matters, I have given direction to the State Government in the line of the decision which has been given by the Supreme Court in the case of ONGC vs. Collector, Central Excise reported in JT 1991 (4) SC 158 to create a high power committee consisting of officers of the State Government as a forum for the adjudication of the disputes inter-se of the State or its functionaries and local authorities or inter-se of local authorities and State or Central Government or local authorities or the State Government and Central Government or vice-versa.

9. These authorities, the State Government or local authorities in respect of their inter-se disputes of whatever nature inclusive of the dispute regarding the

levy, demand and collection of taxes, has to be settled sitting together or when that is not possible or agreeable then to approach to the high power committee and only on failure of high power committee to adjudicate the dispute between the parties to their satisfaction, then on its certification only the aggrieved party may approach to this court or any other appropriate legal forum available, and not otherwise. This course has to be followed also in the case of inter-se disputes between the State Government and other statutory Corporations. This course has to be followed as it is in the larger interest, as observed by the Supreme Court in the case of ONGC vs. Collector of Central Excise (supra). These bodies, the State Government and other local bodies and the Corporations, as far as possible, should refrain themselves from incurring heavy expenses on litigation in respect of the adjudication of their inter-se disputes. These are the public bodies and whatever amount is spent by them on litigation is an amount of the public. This amount should be utilised for the welfare and well-being of the public at large as well as for the development of the country and it should not be allowed to or permitted to be spent in the litigation.

10. It is not brought to the notice of this court whether any such committee has been constituted or not by the State Government, but present is the case in which otherwise also, I do not consider it appropriate to interfere at this stage. The petitioner, as stated earlier, is paying the tax for all these years, may be under protest, but instead of getting the decision in respect of its claim of exemption for the payment of the aforesaid two taxes from the respondent no.1, it has straightway approached to this court. That conduct of the petitioner is difficult to appreciate. The public money has been utilised by the petitioner in litigation and that too where a very meagre amount is involved therein. Instead of spending public money in the litigation, the aforesaid course should have been followed and where the respondent no.1 would not have accepted its claim for exemption from the payment of the aforesaid two taxes then before approaching to this court or any legal forum it should have approached to the respective department of the State Government and after the decision given against it by that department, there would have been some justification in approaching this court or any other appropriate forum for adjudication of claim of exemption. This precisely has not been done admittedly in the present case.

11. I do not consider it appropriate to decide the

matter on merits and consider it more appropriate that this writ petition be disposed of with the directions that the petitioner may lodge its claim of exemption from payment of these two taxes before the respondent no.1 and respondent no.1 shall decide the same on receipt thereof from the petitioner within a period of three months therefrom. The respondent no.1 shall also afford an opportunity of personal hearing to the petitioner if so desire. In case the claim of the petitioner for exemption from the payment of the taxes in question is not acceptable by the respondent no.1, then it shall make a reasoned order and a copy of the same be given to the petitioner. Thereafter the petitioner should approach to the Secretary of the Department concerned, who will decide the matter after hearing the petitioner on merits within reasonable time say three months from the date of receipt of the matter and in case, the said officer is also not agreeable to the claim of the petitioner then it is expected of the said officer to make a reasoned order and a copy of the same be sent to the petitioner.

12. In the result, the challenge of the petitioner to the extent of levy, demand and collection of education cess is held to be illegal and demand of the aforesaid tax under annexure AA is quashed and set aside. So far the rest of the claim of the petitioner against the demand of property and conservancy tax is concerned, the writ petition is disposed of in the terms aforesaid. Rule is made absolute accordingly with no order as to costs.

zgs/-